

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
VERONICA BAUTISTA, as Mother and Natural
Guardian of A.B. AND L.B., infants
under fourteen (14) years,
and VERONICA BAUTISTA, Individually,

Plaintiffs,

- against -

THE UNITED STATES OF AMERICA,
EYAD KHOURY, M.D., and
LUTHERAN MEDICAL CENTER,

Defendants.
-----X

**MEMORANDUM
AND
O R D E R
06 CV 4801 (CLP)**

This action was dismissed with prejudice on December 16, 2009. On January 15, 2010, defendant United States of America made a request for the Court to release the materials previously submitted by plaintiff for *in camera* review in support of their motion to dismiss the action with prejudice. Defendant seeks to review these materials in order to determine whether plaintiffs had a good faith basis for pursuing this lawsuit and whether it should make a motion for fees, costs or sanctions. In a letter dated January 20, 2010, plaintiff contends that the materials submitted *in camera* to the Court should not be released to defendant.


Among the materials submitted for *in camera* review is the affidavit of a medical expert consulted by plaintiff prior to the commencement of the lawsuit. The medical expert states in his affidavit that prior to the lawsuit being filed, he reviewed certain records sent to him by counsel and determined that there was a good faith basis for proceeding on the malpractice claim. Following the receipt of additional records received during discovery and transcripts of the depositions of the doctors who treated plaintiff, the medical expert revised his opinion and

concluded that in fact plaintiff had been treated within the confines of appropriate obstetrical practice and conformed with the accepted standard of care for that time. He then concluded there was no longer a good faith basis to proceed with the lawsuit. As such, plaintiff's counsel made a motion to dismiss the action with prejudice, which was granted.

Accordingly the Court finds that there is no basis for sanctions here and denies defendant's request for the release of the materials submitted *in camera*. The Court also finds that there was initially a good faith basis for filing this lawsuit.

SO ORDERED.

Dated: Brooklyn, New York
February 1, 2010


Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York